

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36082

IN THE MATTER OF THE DRIVER'S	)	
LICENSE SUSPENSION OF: HAL R.	)	
TRUMAN.	)	
HAL R. TRUMAN,	)	2010 Unpublished Opinion No. 329
	)	
Petitioner-Respondent,	)	Filed: January 27, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
STATE OF IDAHO, DEPARTMENT OF	)	THIS IS AN UNPUBLISHED
TRANSPORTATION,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Respondent-Appellant.	)	
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Decision of the district court, reversing an administrative order denying request for evidentiary hearing following suspension of driver's license, reversed.

Alan R. Harrison Law, PLLC, Idaho Falls, for appellant.

Blaser, Sorensen & Oleson, Chtd., Blackfoot, for respondent.

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PERRY, Judge Pro Tem

The Idaho Transportation Department appeals from the district court's decision upon judicial review reversing the department's order denying Hal R. Truman's request for an administrative hearing following the suspension of his driver's license for failing an evidentiary test and awarding Truman costs and attorney fees. For the reasons set forth below, we reverse the district court's decision.

On October 12, 2007, Truman was arrested under suspicion of driving under the influence of alcohol. At the police station, Truman failed a breathalyzer test and a notice of suspension of his driver's license was issued dated October 12. The notice, which also contained a "Date of Service," was signed by the arresting officer. On October 22, Truman filed a request for an administrative hearing. The department denied his request because it was not filed within

seven days of service of the notice of suspension as required by the Idaho Administrative Procedures Act (IDAPA) 39.02.72.100.02.<sup>1</sup> Truman filed a motion for reconsideration, arguing that he was not served with notice until he was released from jail on October 13. Therefore, he contended that, because October 20 was a Saturday, his request was timely filed the morning of Monday, October 22. The department again denied Truman's request as untimely.

Truman filed a petition for judicial review, and the district court reversed the department's denial of Truman's request for an administrative hearing and remanded the matter to the department. The district court held that the department had abused its discretion by failing to consider whether Truman had demonstrated that a request should be granted despite the seven-day filing requirement. On remand, the department again denied Truman's request for an administrative hearing, finding that Truman had failed to demonstrate that a hearing should be granted because his claim that he was not served until October 13 was contradicted by the record. Truman filed a second petition for judicial review. The district court found that the department's narrow reading of IDAPA 39.02.72.100.02 was arbitrary and capricious and an abuse of discretion because it failed to articulate reasons for denying the hearing other than the timeliness of the request and failed to articulate the guidelines upon which it reviews untimely hearing requests. Thus, the district court set aside the department's denial and ordered that a hearing be conducted. The district court also awarded Truman costs and attorney fees as the prevailing party pursuant to I.C. § 12-117 because it found that the department had acted without a reasonable basis in fact or law. The department appeals.

In an appeal from the decision of the district court acting in its appellate capacity under IDAPA, this Court reviews the agency record independently of the district court's decision. *Marshall v. Idaho Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct. App. 2002). This Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67-5279(1); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. This Court instead

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<sup>1</sup> That section provides:

Timely Requests. Hearing requests must be received by the Department no later than 5 p.m. of the seventh day following the service of the Notice of Suspension. Hearing requests received after that time shall be considered untimely. The Department shall deny an untimely hearing request unless the petitioner can demonstrate that a request should be granted.

defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial and competent evidence in the record. *Urrutia v. Blaine County, ex rel. Bd. of Comm's*, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); *Marshall*, 137 Idaho at 340, 48 P.3d at 669.

A court may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. If the agency's decision is not affirmed on appeal, "it shall be set aside . . . and remanded for further proceedings as necessary." I.C. § 67-5279(3).

In this case, the notice of suspension of Truman's driver's license provided that it was served on October 12. Truman's request for a hearing was filed on October 22. Truman moved for reconsideration on the ground that he was not served until October 13 and that October 22 was the first business day after the expiration of the seven-day filing requirement. The department considered Truman's position but found that his allegation was clearly contradicted by the record and concluded that Truman had, therefore, failed to demonstrate why he should be granted a hearing. This finding of fact is supported by competent evidence in the record and, therefore, is not clearly erroneous. Furthermore, this finding was not arbitrary or capricious as Truman provided only his self-serving representation that he was not given notice of suspension until his release from jail.<sup>2</sup> Accepting this fact as found by the department, we conclude that it

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<sup>2</sup> The date of service indicated on the notice of suspension form is October 12, 2007. The department's denial of Truman's hearing request upon remand from the district court was sent on August 11, 2008. During those ten months, nothing prohibited Truman from providing additional support that the date of service indicated on the form was incorrect in the form of affidavits from the arresting officer or the jailer. However, no further evidence was submitted

did not abuse its discretion when it denied Truman's request for a hearing because it was not received within the seven-day filing period required by IDAPA 39.02.72.100.02. Therefore, the district court erred when it reversed the department's denial of Truman's untimely request for an administrative hearing. Additionally, because the department should have prevailed and did not act without any basis in fact or law, the district court also abused its discretion by awarding Truman's costs and attorney fees.

Both Truman and the district court rely heavily on the discretionary nature of IDAPA 39.02.72.100.02. We disagree with the extent of discretion conferred on the department by this section as interpreted by the district court. The section provides that hearing requests *must* be received no later than 5 p.m. on the seventh day following notice and that any request received after that time *shall* be deemed untimely and *shall* be denied. This leaves little room for an unfettered exercise of discretion. Some discretion is left to the department to grant a hearing request, despite its untimeliness, if a petitioner can demonstrate that it should be granted. However, interpreting this exception with the strict mandatory language immediately preceding it implies that such discretion should be reserved for limited, exceptional circumstances. The department exercised this limited discretion upon reconsideration of Truman's hearing request on remand from the district court when it found that his allegation was clearly contradicted by the record and, thus, failed to demonstrate why a hearing should be granted.

For the foregoing reasons, the district court's decision upon judicial review reversing the department's order denying Truman's request for an administrative hearing and awarding costs and attorney fees is reversed. Costs, but not attorney fees, are awarded to the department on appeal.

Judge GUTIERREZ and Judge GRATTON, **CONCUR.**

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for the department's consideration other than Truman's allegation that he was not served until October 13.